IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 36 OF 1990

The Commissioner of Income-tax,
Bombay City-XI, Bombay. ...Applicant
V/s.
Mrs.Suneetaraje A. Apte Trust for
Smt.Sheela and Vaman Apte. ...Respondent

Mr.Ashok Kotangle for Applicant.
Mr.Pramod Vaidya for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 5, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court :-

> "Whether, on the facts and in the circumstances of the case, and having regard to the terms of the Trust Deed dated 9.5.1973, the Tribunal was right in law in holding that the assessee trust is not a discretionary trust and consequently the provisions of sec.164(1) of the I.T.Act, 1961 are not applicable? "

2. Learned Counsel for the Revenue fairly states that the above question has already been answered by the Division Bench of this Court in the case of **Commissioner of Income-Tax V/s. Trustees of the Trust for Relatives of Mrs.Suneeti Raje A. Apte Trust, (1999) 240 ITR 12** against the Revenue.

3. In this view of the matter, the reference stands answered in terms of the Judgment referred to hereinabove in favour of the assessee and against the revenue.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**